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12 Attorneys for Plaintiff
13 Johnny Doe, a minor and through his Guardian, Jane Doe, on
14 behalf of himself and all others similarly situated

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 JOHNNY DOE, a minor, by and through his
18 Guardian, JANE DOE, on behalf of himself and all
19 others similarly situated,

20 Plaintiff,

21 vs.

22 EPIC GAMES, INC., a North Carolina
23 corporation,

24 Defendant.

Case No. 4:19cv3629

**COMPLAINT FOR DECLARATORY
JUDGMENT**

CLASS ACTION

DEMAND FOR JURY TRIAL

1 Plaintiff Johnny Doe, by and through his Guardian, Jane Doe (“Plaintiff”), brings this class action
2 individually and on behalf of a Class of all those similarly situated for damages and injunctive relief
3 against Defendant Epic Games, Inc. (“Defendant” or “Epic”), and alleges upon personal knowledge as to
4 their own actions, and upon information and belief as to counsel’s investigations and all other matters, as
5 follows:

6 **NATURE OF THE ACTION**

7 1. Plaintiff brings this Declaratory Judgment action for a minor’s right to disaffirm in-app
8 purchases in Epic’s video game Fortnite including non-refundable purchases and any use of minor’s one or
9 more gift cards.

10 2. Epic runs a billion-dollar video game company that allows for free downloads of video
11 game application Fortnite, i.e. video game software that users download on different computing device
12 platforms including iOS, Android, Windows, Mac, PlayStation, Xbox and Ninetendo Switch. The video
13 game Fortnite is targeted at children. Although offered for free and may be downloaded at no cost, the
14 Fortnite game is designed to induce in-app purchases, i.e. virtual supplies, ammunition, skins, game
15 currency, etc. These games are highly addictive, designed deliberately so, and tend to compel children
16 playing them to make purchases.

17 3. Plaintiff brings this action for declaratory, equitable and monetary relief under the
18 Declaratory Judgment Act, California’s contract laws, Consumers Legal Remedies Act Cal. Civ. Code §
19 1750, *et seq*, Breach of Good Faith and Fair Dealing, Negligent Misrepresentation, Business and
20 Professions Code Sections 17200 *et seq.*, and/or for Unjust Enrichment.

21 **PARTIES**

22 4. Plaintiff Johnny Doe resides in California with his parents including Guardian, Jane Doe.
23 Plaintiff Johnny Doe at all relevant times was a Fortnite player and a minor.

24 5. Defendant Epic Games, Inc. is a video game company with headquarters in North Carolina
25 and an office at 700 Larkspur Landing Circle, Suite 250, Larkspur, California, 94939-1704 located in the
26 Northern District of California. Defendant released Fortnite Save the World and Fortnite Battle Royale in
27 2017. Both game “modes” are part of the same Fortnite game, and both are immensely popular. As of

28 ///

1 January 2019, there are an estimated 200 million Fortnite players worldwide. Epic made an estimated \$2.4
2 billion dollars on Fortnite in 2018.

3 **JURISDICTION AND VENUE**

4 6. This Court has original jurisdiction of this action under the Class Action Fairness Act of
5 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original jurisdiction because the
6 aggregate claims of the putative class members exceed \$5 million, exclusive of interest and costs, and at
7 least one of the members of the proposed classes is a citizen of a different state than Defendant.

8 7. This Court has personal jurisdiction over Epic Games, Inc. because it has a principal place
9 of business located in Larkspur, California, it conducts substantial business in this District, and a
10 substantial part of the acts and omissions complained of occurred in this District.

11 8. Venue is proper in this District under Title 28, United States Code, Section 1391(b) because
12 Defendant is subject to personal jurisdiction here and regularly conducts business in this District, it has
13 intentionally availed itself of the laws and markets within this District, it does substantial business in this
14 District, it is subject to personal jurisdiction in this District and because the events giving rise to Plaintiff's
15 claims occurred in this District.

16 9. In addition, venue is proper in this District under Title 28, United States Code, Section
17 1391(b) because Defendant's improper conduct alleged in this complaint occurred in, was directed from,
18 and/or emanated from this judicial district.

19 **STATEMENT OF FACTS**

20 **Fortnite**

21 10. Fortnite is an open-world survival video game in which players collect weapons, tools, and
22 resources, also commonly referred as loot, in order to survive and advance in the game. Fortnite currently
23 includes two game modes: Save the World and Battle Royale. This Complaint concerns all Fortnite games
24 modes and versions that allow in-app purchases.

25 11. Fortnite is known for its addictive tendencies and have been compared to crack-cocaine and
26 heroin. *See* Jef Feely and Christopher Palmeri, Fortnite Addiction is Forcing Kids Into Video-Game
27 Rehab, bloomberg.com (November 27, 2018, 9:21 AM), [https://www.bloomberg.com/news/articles/2018-
28 11-27/fortnite-addiction-promptparents-to-turn-to-video-game-rehab](https://www.bloomberg.com/news/articles/2018-11-27/fortnite-addiction-promptparents-to-turn-to-video-game-rehab).

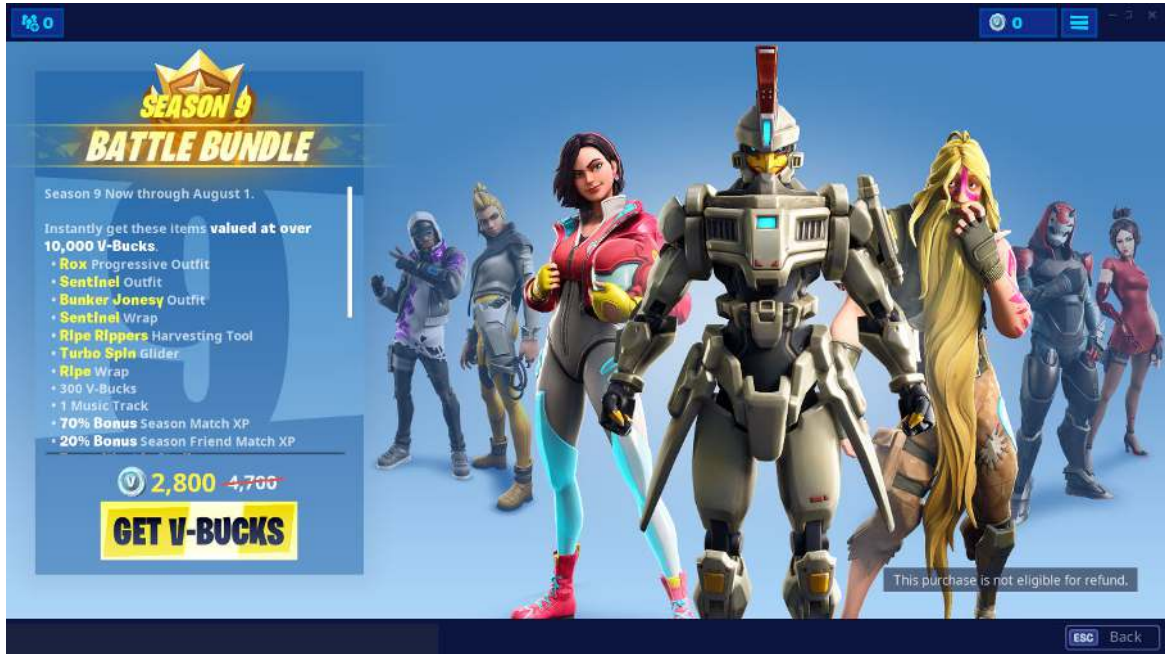
1 12. Players are encouraged to spend money on microtransactions within the game. *See* Society
2 for the Study of Addiction, Predatory Monetization Schemes in Video Games (e.g. Loot Boxes) and
3 Internet Gaming Disorder (2018) available at <https://onlinelibrary.wiley.com/doi/epdf/10.1111/add.14286>
4 (last visited May 16, 2019).

5 13. Players, especially minors, are driven to spend money on in-App Purchases. Many of these
6 purchases are made in a rush and in the heat of the moment while playing the game. On information and
7 belief, Epic does not allow in-App purchases to be refunded, except, on some platforms, Epic may allow
8 refund of a total of three items throughout the lifetime of the user and only from those purchases made
9 from the last 30-days. Some items remain non-refundable and outside Epic's refund policy including for
10 example, Battle Pass or Battle Pass tiers. *See* Screenshot of Battle Pass with Bundles not stating its non-
11 refundable policy at all.



///
23

1 See Screenshots of Battle Pass with Bundles stating in very small inconspicuous text at the bottom
2 right that the purchase is not eligible for refund.



25 14. Even when the minors change their mind in a matter of minutes, minors are not able to
26 refund the purchase and disaffirm the contract.

27
28

1 15. When they do not have consent from their parents or guardians, minors use their own gift
2 card money to make in-app purchases. Even after a change of mind, irrespective of the lapse of time, i.e.
3 within minutes or longer, minors are not allowed a refund.

4 16. Fortnite does not include any inbuilt parental controls that would allow parents or guardians
5 of minors to make informed decisions regarding in-app purchases.

6 17. Fortnite's microtransactions involve monetization schemes designed to target minors.
7 Fortnite uses virtual game currency known as V-Bucks ("Game Currency") making it easier for minors to
8 spend in the context of game play without realizing that they are spending actual cash.

9 18. Fortnite does not include disclosures or notifications of how much money has already been
10 spent. The minor playing Fortnite has no way of knowing and cannot track the money already spent. By
11 keeping such data on money already spent today, this week or this month hidden, the minor is left less
12 equipped to critically appraise the reasonableness of making additional in-app purchases.

13 **V-BUCKS ("Game Currency")**

14 19. Fortnite's in-game currency is V-Bucks.

15 20. Players can earn V-Bucks in-game or purchase them for money. However, earning V-Bucks
16 in the game is a difficult and inconsistent process due to the amount of playtime required and the
17 randomness at which V-Bucks are offered as rewards. By making V-Bucks inordinately difficult and time
18 consuming to earn, Epic creates a "paywall," thus inducing players to purchase V-bucks instead of earning
19 them.

20 21. One hundred V-Bucks generally costs around \$1.00. However, a player can obtain V-Bucks
21 at a discount by purchasing a higher quantity. For example, for a price of \$99.99, a player can purchase
22 13,500 V-Bucks, a \$135.00 value.

23 22. The V-Bucks system allows Epic to play several tricks on its players, especially its minor
24 players. First, because players have converted their money to V-Bucks, it is difficult for players to
25 conceptualize how much actual money they have spent on purchases. This is especially effective on
26 minors who may not have a firm understanding or conceptualization of the relation of money spent to V-
27 Bucks spent.

1 23. This lack of understanding is especially apparent given many young players' willingness to
2 spend hundreds or even thousands of dollars on V-Bucks. If a player was confronted with the amount of
3 money he or she would need to spend at the time of purchase, as opposed to when the player has
4 purchased the game and is invested in playing, most players would think that hundreds of dollars, let alone
5 thousands of dollars, is an exorbitant price to pay to play a video game.

6 24. Second, by only allowing V-Bucks to be purchased in currency packs, and setting the price
7 of items at odd amounts, Epic is playing the "10 hotdogs, 8 buns" trick. The amount of V-Bucks in a
8 currency pack almost never corresponds evenly to the price of items. Using this system, Epic perpetuates a
9 cycle of constantly needing V-Bucks, and never having enough, which leads players to purchase more.

10 25. Third, Epic does not provide players a history of their purchases in-game or otherwise, it is
11 very easy for players to spend an exorbitant amount of V-Bucks without knowing exactly when and what
12 amount of V-Bucks were spent at any given time.

13 26. Finally, Epic's induces players into making more purchases by making the purchase
14 process incredibly easy. Once a player enters and saves a payment method, that player can purchase more
15 V-Bucks at a whim almost instantly. In practice, that means minors can use their parents' credit cards to
16 make an endless number of purchases, with or without permission. The ease of purchase combined with
17 the constant cycle of needing V-Bucks for the latest and greatest items results in more purchases.

18 27. The class period began when Epic introduced the Fornite games with in-App purchases in
19 or around 2017.

20 **Fortnite In-App Purchases**

21 28. Fortnite can be played on different platforms and computing devices including PC, Xbox 1,
22 PS4, iOS, Nintendo Switch, and Android.

23 29. Plaintiff Johnny Doe, a minor, downloaded and installed Fortnite in and around 2018.
24 Johnny Doe uses different platforms to play Fortnite including Sony Playstation 4, and Windows 10
25 Personal Computer.

26 30. While on its face it appears that Epic requires that terms of use be accepted by legal adults
27 18 years and older, Epic targets minors. Epic is willfully blind in designing mechanisms that do not
28 provide any means for minor children to download and confirm approval from a Guardian.

1 31. Any Epic’s terms of use including arbitration and class action waiver clauses are not
2 applicable to minors.

3 32. After installation, Epic does not provide mechanisms for any parental control including
4 requiring authorization of any in-App purchases. Epic purposefully makes in-App purchases easy one-
5 click requests.

6 33. Plaintiff Johnny Doe, a minor, has made several in-App purchases that were labeled non-
7 refundable, including for example, Battle Pass or Battle Pass Tiers. Plaintiff Johnny Doe wanted to
8 disaffirm the contracts, but was not allowed to do so.

9 34. Plaintiff Johnny Doe, a minor, has made V-Bucks purchases without understanding that
10 amounts involved in actual money to-date, that day, that week or that month.

11 35. Plaintiff Johnny Doe, a minor, has used his own money through gift cards received on
12 social occasions including birthdays and such. Subsequent to the purchases, Plaintiff Johnny Doe wanted
13 to cancel those purchases but was not allowed to do so under Epic’s non-refundable policy.

14 36. Courts have found in-app purchases by minors using the apps that are unauthorized by adult
15 account holders are harm to the account holders suitable for monetary relief. *See* Apple Settlement Order
16 by this Court, *In re Apple in-App Purchase Litigation*, Civ. No. 5:11-cv-01758-EJD (N.D. Cal. October
17 18, 2013). “Apple shall provide full refunds to Account Holders who have been billed by Apple for
18 unauthorized In-App Charges incurred by minors.” FTC Consent Order, *In the Matter of Apple Inc.*,
19 Docket C-4444 (Mar. 25, 2014). “Google shall provide full refunds to Account Holders who have been
20 billed by Google for unauthorized In-App Charges incurred by minors” FTC Consent Order, *In the Matter*
21 *of Google, LLC*, Docket C-4449 (Dec. 2, 2014).

22 37. The District Court of Western District of Washington has also found that all in-app
23 purchases made by children 17 and under are included in the harm when the account holder authorized the
24 use of the app by children but did not authorize the specific in-app purchases. *FTC v. Amazon*, Civ. No.
25 14-1038-JCC ECF No. 287 at p. 11 (W.D. Wash., Nov. 10, 2016) (“Finally, the Court is not persuaded by
26 Amazon’s argument that purchases made by children age 13 and older are not part of the harm in this
27 matter. As the FTC points out, the FTC never made any sort of concessions on the scope of liability by
28 using search terms like “pre-teen” and “under-13” during discovery. The Court agrees. This case deals

1 with all unauthorized in-app purchases made by children. Children between ages 13 and 17 are included in
2 this definition because drawing a line at age 13 would be an arbitrary distinction for which the Court finds
3 no basis under these facts. Therefore, all unauthorized in-app purchases by children, not just those age 12
4 and under, are included in the potentially eligible transactions.”)

5 **CLASS ALLEGATIONS**

6 38. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3), on behalf of
7 himself and the following proposed “Nationwide Class”:

8 All minors in the United States, within the applicable statute of
9 limitations, who made an in-App purchase that was non-refundable, or made an
10 in-App purchase with their own gift card.

11 39. Plaintiff also seeks to represent the following “California Sub-Class”:

12 All minors in the state of California, within the applicable statute of
13 limitations, who made an in-App purchase that was non-refundable, or made an
14 in-App purchase with their own gift card.

15 40. The Nationwide Class and the California Sub-Class will be referred to collectively as the
16 “Class.”

17 41. Excluded from the proposed class are Defendant and its affiliates, its employees, officers,
18 directors, legal representatives, heirs, successors, subsidiaries and affiliates, and the judicial officers and
19 their immediate family members and associated court staff assigned to this case, as well as all persons who
20 make a timely election to be excluded from the proposed class.

21 42. Certification of Plaintiff’s claims for class-wide treatment is appropriate because Plaintiff
22 can prove the elements of his claims on a class-wide basis using the same evidence they would use to
23 prove those elements in individual action alleging the same claims.

24 43. This action meets all applicable standards of Fed. R. Civ. P. 23 for class certification, in
25 that Plaintiff can demonstrate the elements delineated below.

26 44. Numerosity. The members of the proposed Class are so numerous and geographically
27 dispersed that individual joinder of all proposed class members is impracticable. *See* Fed. R. Civ. P.
28 23(a)(1). While Plaintiff believes that there are millions of members of the proposed class, the precise
number of Class members is unknown, but may be ascertained from Epic’s books and records. Epic

1 maintains a list of users that includes personal information for the user including age and whether they
2 have made in-App purchases.

3 45. Applying a reasonable and prudent person standard to the minor users of Fortnite under the
4 same or similar circumstances, each minor user would qualify to be a Class Member requesting the right to
5 cancel and get refund on their in-App purchases. Any reasonable and prudent person under the same or
6 similar circumstances wants to have the flexibility to disaffirm an in-App purchase that was made in a rush
7 or heat of the moment while playing the game.

8 46. Class members may be notified of the pendency of this action by recognized, court
9 approved notice dissemination methods, which may include U.S. mail, e-mail, internet postings, and/or
10 published notice.

11 47. Commonality and Predominance. This action involves common questions of law and fact,
12 which predominate over any questions affecting individual Class members. *See* Fed. R. Civ. P. 23(a)(2)
13 and (b)(3). These include, without limitation:

- 14 a. Whether Epic engaged in the conduct alleged in this Complaint;
- 15 b. Whether Epic designed, advertised, marketed, distributed, sold or otherwise placed
16 video game Fortnite into the stream of commerce in the United States;
- 17 c. Whether Epic's Fortnite in-App purchase non-refundable policy for minors violates
18 state contract laws;
- 19 d. Whether Epic's Fortnite in-App purchase policy using gift cards from minors
20 violates state contract laws;
- 21 e. Whether Plaintiff and members of the Class are injured and harmed directly by
22 Epic's policies and enticement to entrap minors into making in-App purchases;
- 23 f. Whether Plaintiff and members of the Class are entitled to damages due to Epic's
24 conduct as alleged in this Complaint, and if so, in what amounts; and
- 25 g. Whether Plaintiff and members of the Class are entitled to equitable relief,
26 including, but not limited to, restitution or injunctive relief as requested in this
27 Complaint.
28

1 48. Typicality. Plaintiff's claims are typical of the putative class members' claims because,
2 among other things, all such Class members were comparably injured through Epic's wrongful conduct as
3 described above. *See* Fed. R. Civ. P. 23(a)(3). Epic's creation and enforcement of its in-App purchase
4 policy is uniform for all Plaintiff and Class Members.

5 49. Adequacy. Plaintiff is adequate proposed class representative because his interests do not
6 conflict with the interests of the other members of the proposed Class they seek to represent; because he
7 has retained counsel competent and experienced in complex class action litigation; and because they intend
8 to prosecute this action vigorously. The interests of the proposed class will be fairly and adequately
9 protected by Plaintiff and their counsel. *See* Fed. R. Civ. P. 23(a)(4).

10 50. Declaratory and Injunctive Relief. Epic has acted or refused to act on grounds generally
11 applicable to Plaintiff and the other members of the proposed Class, thereby making appropriate final
12 injunctive relief and declaratory relief, as described below, with respect to the proposed Class as a whole.
13 *See* Fed. R. Civ. P. 23(b)(2). Epic's wrongful conduct alleged herein is not a result of a one-time
14 accidental software bug, but is grounded in Epic's policy that is enforced uniformly. Epic's in-App
15 purchase non-refundable policy was intentionally created. Epic's in-App purchase policy is intentionally
16 enforced on all users. Plaintiff's injuries are real, immediate and ongoing. Plaintiff seeks injunctive and
17 declaratory relief from Epic.

18 51. Superiority. A class is superior to any other available means for the fair and efficient
19 adjudication of this controversy, and no unusual difficulties are likely to be encountered in the
20 management of this class action. The damages or other financial detriment suffered by Plaintiff and
21 putative Class members are relatively small compared to the burden and expense that would be required to
22 individually litigate their claims against Epic, so it would be impracticable for members of the proposed
23 Classes to individually seek redress for Epic's wrongful conduct.

24 52. Applying the principles of equity or balance of equities, expecting an individual Plaintiff
25 who is at a disadvantage with limited resources and spending capacity, and with minimal negotiating
26 power, if any, to litigate claims against Epic, a billion-dollar corporation that has immense resources and
27 deep pockets would be unfair. Class actions are a necessary and essential means to provide for public-
28

1 interest litigations with checks and balances to curtail the growing power of private corporations including
2 Epic.

3 53. In the interest of public policy and recent trends of privacy concerns including safeguarding
4 the use of the internet by minors, the Court should recognize the right of Plaintiff and Class Members to
5 get refunds on spur of the moment purchases that are subsequently regretted. Laws protecting minors are
6 equally applicable in the cyber world.

7 54. Even if Class members could afford individual litigation, the court system could not.
8 Individualized litigation creates a potential for inconsistent or contradictory judgments, and it increases the
9 delay and expense to all parties and the court system. By contrast, the class action device presents far
10 fewer management difficulties and provides the benefits of single adjudication, economy of scale, and
11 comprehensive supervision by a single court. *See* Fed. R. Civ. P. 23(b)(3).

12 **VIOLATIONS ALLEGED**

13 **COUNT I**

14 **DECLARATORY JUDGMENT**

15 55. Plaintiff and Class Members incorporate and reallege all allegations set out in the preceding
16 paragraphs including paragraphs 1 through 54, above.

17 56. On information and belief, Epic's Fortnite is approved for children 13 years and older.
18 Epic knows that many minors, including children younger than 13, play Fortnite. Epic's in-App purchases
19 are an offer to minors. All in-App purchases by minors are acceptance. Epic enters into a contract with a
20 minor when an in-App purchase by the minor is confirmed. Epic gives the consideration of digital goods
21 of in-App purchases, i.e. skin, motes, v-bucks etc. exchanged for consideration of returned purchase value
22 in actual money from the minor.

23 57. Under California law, and equivalent law in most states nationwide, minors have the right
24 to disaffirm contracts such as those at issue here. Cal. Fam. Code § 6710 (2010).

25 58. A parent or guardian may disaffirm a contract on behalf of a minor.

26 59. The contracts between Defendant and the members of the Class are voidable – a fact that
27 Defendant denies.

1 60. Accordingly, there is an actual controversy between the parties, requiring a declaratory
2 judgment.

3 61. This claim for declaratory judgment is brought pursuant to 28 U.S.C. § 2201 *et seq.*,
4 seeking a determination by the Court that: (a) this action may proceed and be maintained as a class action;
5 (b) the sales contracts between Defendant and the children of the class members, relating to the purchase
6 of Game Currency, are voidable at the option of the respective class members on behalf of their minor
7 children; (c) if the class members elect to void the contracts, they will be entitled to restitution and interest
8 thereon; (d) an award of reasonable attorneys' fees and costs of suit to Plaintiff and the Class is
9 appropriate; and (e) such other and further relief as is necessary and just may be appropriate as well.

10 **COUNT II**

11 **VIOLATION OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT ("CLRA")**

12 **Cal. Civ. Code § 1750, et seq.**

13 62. Plaintiff and Class Members incorporate and reallege all allegations set out in the preceding
14 paragraphs including paragraphs 1 through 61, above.

15 63. Plaintiff and the other class members are consumers within the meaning of Cal. Civ. Code §
16 1761(d).

17 64. Epic violated CLRA's proscription against the concealment of the characteristics, use,
18 benefit, or quality of goods by actively marketing and promoting certain in-App game purchases with the
19 intent to induce minors to make purchases.

20 65. Epic has violated: (a) § 1770(a)(5)'s proscription against representing that goods have uses
21 or characteristics they do not have; (b) § 1770(a)(7)'s proscription against representing that goods are of
22 particular standard or quality when they are of another; (c) § 1770(a)(14)'s proscription against
23 "Representing that a transaction confers or involves rights, remedies, or obligations which it does not have
24 or involve, or which are prohibited by law."

25 66. Epic owed a duty to disclose material facts, including non-refundable terms and historical
26 statements of in-App purchases made to-date.

1 67. Plaintiff and the Class suffered actual damages as a direct and proximate result of Epic's
2 actions, concealment and/or omissions in the advertising, marketing and promotion of its bait Apps, in
3 violation of the CLRA, as evidenced by the substantial sums Epic pocketed.

4 68. Plaintiff, on behalf of himself and for all those similarly situated, demand judgment against
5 Epic for equitable relief in the form of restitution and/or disgorgement of funds paid to Epic.

6 69. In accordance with § 1782(a) of the CLRA, on May 17, 2019, counsel in this class action
7 served Epic, by certified mail requiring return receipt, with notice of its alleged violations of the CLRA.

8 70. Epic has not met the demand set forth in that letter, and therefore Plaintiff here seeks the
9 following relief under CLRA § 1780, for Epic's violations of CLRA §§ 1770(a)(5) and (a)(7):

- 10 • Actual damages under Cal. Civ. Code § 1780(a)(1);
- 11 • punitive damages under Cal. Civ. Code § 1780(a)(4);
- 12 • attorneys' fees and costs under Cal. Civ. Code § 1780(d); and
- 13 • any other relief the Court deems proper under Cal. Civ. Code § 1780(a)(5).

14 71. Plaintiff, on behalf of himself and on behalf of a similarly situated Class of consumers also
15 seek injunctive relief under Cal. Civ. Code § 1780(d).

16 **COUNT III**

17 **BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING**

18 72. Plaintiff and Class Members incorporate and reallege all allegations set out in the preceding
19 paragraphs including paragraphs 1 through 71, above.

20 73. Epic's contracts with Plaintiff and the Class included the term, implied at law in all
21 contracts, requiring the parties to exercise "good faith and fair dealing" in all duties relating to the
22 performance of the contract. By engaging in the misconduct alleged herein, Epic has breached its
23 contractual duty of good faith and fair dealing with Plaintiff and the Class.

24 74. The elements of a cause of action for breach of the covenant of good faith and fair dealing
25 are: (1) an agreement between the parties, (2) plaintiff's performance, (3) defendant engaged in conduct
26 separate and apart from the performance of obligations under the agreement without good faith and for the
27 purpose of depriving plaintiff of rights and benefits under the agreement, and (4) damages to plaintiff. All
28 of the necessary elements are pled in this complaint.

1 75. While, on information and belief, on its face it may appear that Epic requires a person older
2 than 18 years to sign the terms of use, Epic knows that many minors i.e. school going children from
3 elementary, middle and high schools are playing Fortnite. Epic's willful blindness towards taking steps to
4 get Parent or Guardian consent and purposeful inducement of minors to make colorful and tempting in-
5 App purchases breaches Epic's duties of good-faith and fair dealing.

6 76. Epic's actions are without good-faith and are for the sole purpose of depriving Plaintiff and
7 the Class of rights and benefits under the contract i.e., a sales transaction for content the consumer
8 intended to purchase, and not rash purchases that cannot be refunded. Had Plaintiff, his Guardian or other
9 member of the Class known the amounts spent on purchasing, they would not have permitted the sales
10 transaction from being consummated.

11 77. That Epic collects millions of dollars from Plaintiff and the Class, by luring their children to
12 download bait Apps and then spend vast sums on Game Currency without parental knowledge or
13 permission, is the quintessence of bad faith and unfair dealing with Plaintiff and the Class.

14 78. Plaintiff and the other members of the Class have suffered damages as a result of Epic's
15 actions.

16 **COUNT IV**

17 **NEGLIGENT MISREPRESENTATION**

18 79. Plaintiff and Class Members incorporate and reallege all allegations set out in the preceding
19 paragraphs including paragraphs 1 through 78, above.

20 80. Epic had a duty to provide honest and accurate information to its customers including
21 minors so that the minors could make informed decisions on the in-App purchases.

22 81. Epic specifically and expressly misrepresented material facts to Plaintiff and Class
23 Members, as discussed above by not giving notice to its non-refundable policy at the time of purchases and
24 omitting to give summaries or reports of purchases that have already occurred for the day, week, month or
25 year.

26 82. Epic knows, or in the exercise of reasonable diligence, should have known, that the
27 ordinary and reasonable minor would be misled by Epic's misleading and deceptive in-App game
28 purchases policies.

1 83. Plaintiff and the Class Members justifiably relied on Epic’s misrepresentations and have
2 been subsequently damaged in an amount to be determined at trial.

3 **COUNT V**

4 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONAL CODE §17200**

5 84. Plaintiff and Class Members incorporate and reallege all allegations set out in the preceding
6 paragraphs including paragraphs 1 through 83, above.

7 85. Plaintiff and Class Members have standing to pursue a cause of action against Defendant
8 for unfair and/or unlawful business acts or practices because they have suffered an injury-in-fact and lost
9 money due to Defendant’s actions and/or omissions as set forth herein.

10 86. Defendant’s conduct is unlawful under Bus. & Prof. Code § 17200 *et seq.* (“UCL”) because
11 it is in violation of the minor’s right to disaffirm contract, CLRA, breach of good faith and fair dealing,
12 and negligent misrepresentation, as discussed above.

13 87. Defendant’s conduct described herein is “unfair” under Bus. & Prof. Code § 17200 because
14 it violates public policy and is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious
15 to consumers, and any utility of such practices is outweighed by the harm caused to consumers, including
16 to Plaintiff, the Class, and the public. Defendant engages in unfair practices by actively advertising,
17 marketing and promoting Apps as “free” with the intent to induce minors to purchase Game Currency in a
18 manner likely to deceive the public.

19 88. In addition, Defendant’s conduct constitutes a fraudulent business practice within the
20 meaning of Bus. & Prof. Code § 17200, *et seq.*, in that Defendant intentionally and knowingly omitted
21 giving information on the amounts spent on in-app purchases. Such representations and omissions misled
22 Plaintiff and Class members and are likely to mislead the public.

23 89. Defendant knew or should have known that its representations regarding the in-App
24 purchases were false, deceptive, and misleading.

25 90. Defendant’s wrongful conduct is ongoing and part of a pattern or generalized course of
26 conduct repeated on thousands of occasions yearly.

27 91. Pursuant to Bus. & Prof. Code § 17203, Plaintiff seeks an injunction enjoining Defendant
28 from continuing to engage in the conduct described above, or any other act prohibited by law.

1 92. Plaintiff also seeks rescission and an order requiring Defendant to make full restitution and
2 to disgorge its ill-gotten gains wrongfully obtained from members of the Class as permitted by Bus. &
3 Prof. Code § 17203.

4 93. Additionally, Plaintiff and the Class members seek an order requiring Defendant to pay
5 attorneys' fees pursuant to Cal. Civ. Code § 1021.5.

6 **COUNT VI**

7 **RESTITUTION OR UNJUST ENRICHMENT**

8 94. Plaintiff and Class Members incorporate and reallege all allegations set out in the preceding
9 paragraphs including paragraphs 1 through 93, above.

10 95. Through the conduct described herein, Defendant received and retained tangible benefits at
11 the expense of Plaintiff and the Class; including money paid for Defendant's non-refundable in-App
12 purchases of digital products and game currency.

13 96. Defendant, directly or indirectly, has received and retains information regarding its gaming
14 microtransactions of Plaintiff and the Class. Defendant appreciates or has knowledge of said benefits.

15 97. Under principles of equity and good conscience, Defendant should not be permitted to
16 retain the revenue it acquired through its unlawful conduct, i.e. with its non-refundable policy. All funds,
17 revenues, and benefits Defendant has unjustly received as a result of its actions rightfully belong to
18 Plaintiff and the Class.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, pray for judgement
21 against Defendant as follows:

22 1. Certify this case as a Class action on behalf of the Class as Nationwide Class and California
23 Sub-Class defined above, appoint Plaintiff as Class representative, and appoint their counsel as Class
24 counsel;

25 2. Enter judgment in favor of the Plaintiff and Class and against Epic:

26 i. A Declaratory Judgment determining that the in-App purchases are contracts
27 between Defendant and the minor children are voidable at the option of the respective class members; and
28

1 if the class members elect to void the contracts, they will be entitled to restitution, attorney's fees, costs
2 and interests thereon;

- 3 ii. CLRA
- 4 iii. Breach of Good Faith and Fair Dealing,
- 5 iv. Negligent Misrepresentation and
- 6 v. Violation of Cal. Bus. & Prof. Code § 17200, *et seq.*
- 7 vi. Restitution or Unjust Enrichment;

8 3. As applicable to the Classes *mutatis mutandis*, awarding injunctive and equitable relief
9 including, *inter alia*: (i) prohibiting Defendant from engaging in the acts alleged above; (ii) requiring
10 Defendant to disgorge all of its ill-gotten gains to Plaintiff and the other Class Members, or to whomever
11 the Court deems appropriate; (iii) requiring Defendant to delete all data surreptitiously or otherwise
12 collected through the acts alleged above; (iv) requiring Defendant to provide Plaintiff and the other Class
13 Members a means to easily and permanently decline any participation in two-factor authentication; (v)
14 awarding Plaintiff and Class Members full restitution of all benefits wrongfully acquired by Defendant by
15 means of the wrongful conduct alleged herein; and (vi) ordering an accounting and constructive trust
16 imposed on the data, funds, or other assets obtained by unlawful means as alleged above, to avoid
17 dissipation, fraudulent transfers, and/or concealment of such assets by Defendant;

18 4. Award damages, including statutory damages where applicable, to Plaintiff and Class
19 Members in an amount to be determined at trial;

20 5. Award restitution against Defendant for all money to which Plaintiff and the Classes are
21 entitled in equity;

22 6. Restrain Defendant, its officers, agents, servants, employees, and attorneys, and those in
23 active concert or participation with them from continued access, collection, and transmission of Plaintiff
24 and Class Members' personal information via preliminary and permanent injunction;

25 7. Award Plaintiff and Class Members:

- 26 i. their reasonable litigation expenses and attorneys' fees;
- 27 ii. pre- and post-judgment interest, to the extent allowable;
- 28 iii. restitution, disgorgement and/or other equitable relief as the Court deems proper;

1 iv. compensatory damages sustained by Plaintiff and all others similarly situated as a
2 result of Defendant's unlawful acts and conduct;

3 v. statutory damages; and

4 vi. permanent injunction prohibiting Defendant from engaging in the conduct and
5 practices complained of herein;

6 8. For such other and further relief as this Court may deem just and proper.

7
8 Dated: June 21, 2019

ONE LLP

9
10 By: /s/ Deepali A. Brahmbhatt

Peter R. Afrasiabi

Deepali A. Brahmbhatt

John E. Lord

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12
13 Attorneys for Plaintiff Johnny Doe and his
Guardian Jane Doe

DEMAND FOR JURY TRIAL

Plaintiff and the Class Members hereby demand a trial by jury of all issues so triable.

Dated: June 21, 2019

ONE LLP

By: /s/ Deepali A. Brahmbhatt

Peter R. Afrasiabi

Deepali A. Brahmbhatt

John E. Lord

Attorneys for Plaintiff Johnny Doe and his
Guardian Jane Doe

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